

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
) Docket No. CWA-07-2006-0125
)
Johnson-Yust Investment Co., LLC)
42 Chaunston Court) FINDINGS OF VIOLATION,
St. Peters, Missouri 63376) ORDER FOR COMPLIANCE
)
Respondent)
)
Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))
_____)

Preliminary Statement

1. The following Findings of Violation and Order for Compliance (“Order”) are made and issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region VII and further delegated to the Director of Region VII’s Water, Wetlands, and Pesticides Division.

2. Respondent is Johnson-Yust Investment Co., LLC, a company registered under the laws of Missouri and authorized to conduct business in the State of Missouri.

Statutory and Regulatory Framework

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

4. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

5. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of storm water. Section 402(p) of the CWA, 33

U.S.C. § 1342(p), requires, in part, that a discharge of storm water associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

6. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations setting forth the NPDES permit requirements for storm water discharges at 40 C.F.R. § 122.26.

7. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) requires dischargers of storm water associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

8. 40 C.F.R. § 122.26(b)(14)(x) defines “storm water discharge associated with industrial activity,” in part, as construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five (5) acres of total land area which are not part of a larger common plan of development or sale.

9. The Missouri Department of Natural Resources (“MDNR”) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

10. The MDNR issued four (4) General Permits to Johnson-Yust Investment Co., LLC for the discharge of storm water under the NPDES Permit Numbers MO-R109-K05, MO-R109-K06, MO-R109-K07, and MO-R109-K08. The four General Permits became effective on June 27, 2005, and expire on March 7, 2007. The General Permits govern storm water discharges associated with construction or land disturbance activity (e.g., clearing, grubbing, excavating, grading, and other activity that results in the destruction of the root zone).

Factual Background

11. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. At all times relevant to this action, Respondent was the owner and/or operator of a construction site known as Mason Glen (“Site”) located at the Northeast corner of Highway N and Duello Road in O’Fallon, Missouri. Construction activities occurred at the Site including clearing, grading and excavation which disturbed five (5) or more acres of total land area or which disturbed less than five (5) acres of total land area that was part of a larger common plan of development or sale.

13. Storm water, snow melt, surface drainage, and runoff water leaves Respondent's construction site and goes into Peruque Creek and unnamed tributaries of Peruque Creek. The runoff and drainage from the Site is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

14. Storm water contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. The Site has "storm water discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14)(x), and is a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

16. Respondent discharged pollutants into Peruque Creek, Dardenne Creek, and unnamed tributaries of Peruque Creek and Dardenne Creek. The unnamed tributaries, Peruque Creek, and Dardenne Creek are "navigable waters" as defined by CWA Section 502, 33 U.S.C. § 1362.

17. Storm water runoff from Respondent's construction site results in the addition of pollutants from a point source to navigable waters, and thus is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

18. Respondent's discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(x), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

19. Respondent applied for and was issued NPDES permit coverage under the General Permits described in paragraph 10 above. MDNR assigned Respondent permit numbers MO-R109-K05, MO-R109-K06, MO-R109-K07, and MO-R109-K08, for Phases I-IV of the Mason Glen development, all of which were issued on June 27, 2005.

20. On January 19, 2006, and January 20, 2006, EPA inspectors performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate the treatment and disposal of storm water at the site in accordance with the CWA.

Findings of Violation

21. The facts stated in paragraphs 11 through 20 above are herein incorporated.

Count 1

Failure to Install Appropriate Best Management Practices

22. Part 8(e) of the Requirements and Guidelines section of Respondent's permit states that storm water runoff from disturbed areas which leave the site boundary shall pass through an appropriate impediment to sediment movement, such as a sedimentation basin, sediment trap, silt fence, etc., prior to leaving the land disturbance site.

23. The EPA inspection referenced in paragraph 20 above, revealed that Respondent did not install appropriate impediments to sediment movement for storm water to pass through prior to leaving the construction site.

24. In Respondent's Storm Water Pollution Prevention Plan (SWPPP) for Phase III, developed pursuant to Respondent's permit, the Sequence of Major Events requires installation of sedimentation basins prior to clearing and grubbing.

25. The EPA inspection referenced in paragraph 20 above, revealed that Respondent failed to install Sedimentation Basin 'D' prior to clearing and grubbing.

26. Part 8(d) of the Requirements and Guidelines section of Respondent's permit states that where soil disturbing activities cease in an area for more than 14 days, the disturbed areas shall be protected from erosion by stabilizing the area.

27. The inspection referenced in paragraph 20 above, revealed that Respondent failed to stabilize areas where soil disturbing activity had ceased for more than 14 days.

28. Respondent's failure to install appropriate impediments to sediment movement is a violation of Respondent's General Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

Count 2

Failure to Properly Implement and Maintain Best Management Practices

29. Part 11 of the Requirements and Guidelines section of Respondent's permit requires that the Respondent shall at all times maintain all pollution control measures and systems in good order to achieve compliance with the terms of the General Permit.

30. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had not properly installed and maintained silt fencing on the construction site.

31. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had not properly installed and maintained sedimentation basins.

32. Part 7(a) of the Requirements and Guidelines section of Respondent's permit requires that Respondent select, use, operate, and maintain BMPs in accordance with EPA guidance document, "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," which provides that "excess concrete and wash water should be disposed of in a manner that prevents contact between these materials and storm water which will be discharged from the site."

33. The EPA inspection referenced in paragraph 20 above revealed that the concrete washout area at the main entrance to the construction site lacked adequate controls to prevent contact between the concrete wash out and storm water runoff.

34. Respondent's failure to properly maintain its pollution control measures is a violation of Respondent's General Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

Count 3

Failure to Properly Document Site Inspections

35. Part 10 of the Requirements and Guidelines section of Respondent's permit requires that documented inspections be performed at a minimum of once per week on disturbed areas which have not been finally stabilized. In addition, it requires a log of each inspection to be kept. At a minimum, the inspection log shall include, *inter alia*: observations relative to the effectiveness of the BMPs, actions taken or necessary to correct deficiencies, and listing of areas where land disturbance operations have permanently or temporarily stopped. These inspection logs shall be signed by the permittee or person performing the inspection.

36. Part 10 of the Requirements and Guidelines section of Respondent's permit requires that documented inspections be performed within a reasonable time period (not to exceed 72 hours) following heavy rains.

37. The EPA inspection referenced in paragraph 20 above, revealed that Respondent failed to keep adequate inspection logs in accordance with the Respondent's permit requirements.

38. Respondent's failure to properly perform and document site inspections is a violation of Respondent's General Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

requirements of the permit.

41. Within thirty (30) days of the effective date of this Order, the Respondent shall submit a written report detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.

42. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, the Respondent shall, within those thirty (30) days, submit a comprehensive written plan for the elimination of the cited violations. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

Submissions

43. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Nicholas Peak
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

44. A copy of documents required to be submitted to MDNR by this Order, shall be submitted by mail to:

Kevin Mohammadi, Chief
Enforcement Section
Water Pollution Control Program
Missouri Dept. of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

45. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

46. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Sections 309 of the Act, 33 U.S.C. § 1319, for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for any violation whatsoever.

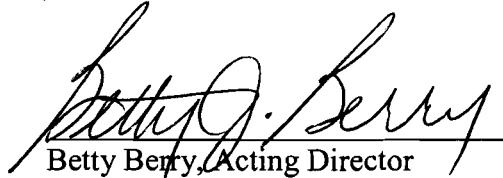
Access and Requests for Information

47. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's site, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

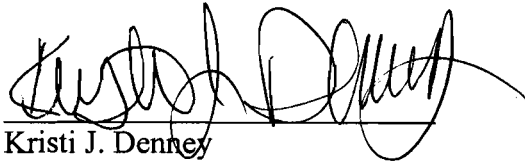
Severability

48. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Issued this 10th day of MARCH, 2006.



Betty Berry, Acting Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101



Kristi J. Denney
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

Tom R. Johnson, Registered Agent
Johnson-Yust Investment Co., LLC
42 Chaunston Court
St. Peters, Missouri 63376

and

Mr. Kevin Mohammadi, Chief
Enforcement Section
Water Pollution Control Program
Missouri Dept. of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102.

3/17/06
Date

E. O. Ketchett